81-2170

No. M-469

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

WILLIAM J. HASER,

Petitioner,

vs.

JOAN H. WISKOWSKI, Director of Division of Motor Vehicles, State of New Jersey,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY SAT BELOW: HON. PAUL R. KRAMER, J.S.C.

[redacted] PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where an individual has allegedly caused a fatal accident, and the Director of the Division of Motor Vehicles seeks to administratively suspend his driver's license, but no action is taken until thirty months after the incident, has the individual received due process?

Where an individual has voluntarily refrained from driving for one year after being involved in a fatal accident, and the Director suspends his driving privilege thirty months later after he is gainfully employed, should not the period of voluntary suspension be used as a mitigating factor in determining the period of suspension?

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981
NO.

WILLIAM J. HASER,
Petitioner,

vs.

JOAN H. WISKOWSKI, Director of the
Division of Motor Vehicles,
State of New Jersey,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

William J. Haser, the petitioner, herein, prays that a writ of certiorari issue to review the judgment of the New Jersey Supreme Court entered in the above-entitled matter on February 9, 1982.

OPINIONS BELOW

The judgment of the New Jersey Supreme Court is printed in Appendix A hereto, *infra*, page A1. The decision of the New Jersey Division of Motor Vehicles is printed in Appendix C hereto, *infra* page A3.

JURISDICTION

The judgment of the New Jersey Supreme Court (Appendix A hereto, *infra*, page A1) was entered on February 9, 1982. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1257, section 3.

QUESTIONS PRESENTED

Where an individual has allegedly caused a fatal accident, and the Director of the Division of Motor Vehicles seeks to administratively suspend his driver's license, but no action is taken until thirty months after the incident, has the individual received due process?

Where an individual has voluntarily refrained from driving for one year after being involved in a fatal accident, and the Director suspends his driving privilege thirty months later after he is gainfully employed, should not the period of voluntary suspension be used as a mitigating factor in determining the period of suspension?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens

of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves *N.J.S.A.* 39:5-30 which is printed in Appendix B hereto, *infra*, page A2.

STATEMENT OF THE CASE

The petitioner was driving an automobile on November 14, 1978. One of the passengers was killed when the petitioner lost control of the automobile and struck a tree. Petitioner was convicted of reckless driving in the Municipal Court. The New Jersey Division of Motor Vehicles subsequently acted to suspend petitioner's driver's license administratively. The date of the proposed suspension was April 27, 1979, and the request for hearing was filed by counsel which resulted in an informal conference on August 1, 1979.

The petitioner was so traumatized by the accident that he voluntarily refrained from operating a motor vehicle for a one year period following the accident. The petitioner also voluntarily attended and successfully completed a good driver program.

Nothing further was done by the Division of Motor Vehicles until March 6, 1981, which resulted in a hearing held on April 24, 1981. The formal administrative trial was not held until almost thirty months after the incident.

Counsel moved to dismiss on the ground of administrative delay, which motion was denied. (Appendix C,

hereto *infra* page A4) Trial ensued and the Administrative Law Judge recommended a one-year license suspension. The Director of Motor Vehicles subsequently forwarded a proposed Notice of Suspension of the petitioner's driving privileges. A temporary stay of the suspension has been granted.

The petitioner appealed the suspension to the New Jersey Appellate Division claiming that the state's delay in prosecuting the proposed suspension violated due process. Petitioner's appeal was denied. The petitioner then filed a Petition for Certification in the New Jersey Supreme Court again arguing that he had been denied due process by the state's delay. This Petition was denied.

REASONS FOR GRANTING WRIT

This Court has declared that whether a dirver's license is declared to be a "right" or a "privilege," the State may not take away a driver's license without granting procedural due process. Although the leading case of *Bell v. Burson*, 402 U.S. 535, 29 L.Ed.2d 90, 91 S. Ct. 1586 (1971) dealt with the question of whether a state could suspend the petitioner's license before a hearing was held, the decision made mention of several general considerations relevant to this case. The Court noted:

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 23 L.Ed.2d 349, 89 S. Ct. 1820 (1969); *Goldberg v. Kelly*, 397 U.S. 254, 25 L.Ed.2d 287, 90 S. Ct. 1011 (1970). This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." 402 U.S. at 539

As to the nature of the procedural due process which is required before a driver's license may be suspended or revoked, the question is whether the procedure in question was "appropriate to the nature of the case," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 94 L.Ed 865, 872, 70 S. Ct. 6542 (1950). However, this Court made it clear in *Bell, supra*, that it is the substance and not the form which determines whether

the minimum constitutional requirements have been met.

The determination necessarily rests upon whether the hearing which was given was "appropriate" as required by *Mullane, supra*, as well as "meaningful," as required by *Armstrong v. Manzo*, 380 U.S. 545, 552, 14 L.Ed.2d 62, 85 S. Ct. 1187 (1965).

In *Town Court Nursing Ctr., Inc. v. Beal*, 586 F.2d 280 (3rd Cir. 1978) the Court agreed that due process is required before a party can be deprived of either a "right" or a "government-granted privilege." The Court further noted that there can be no distinction between these so-called rights and privileges since many individuals are dependent upon government privileges for their very existence. 586 F.2d at 285.

In the present case, the concern is with the timing of the suspension hearing, in that it was not held until some thirty months after the accident. This delay prejudiced the petitioner in several ways.

First, the petitioner had voluntarily refrained from driving for a period of one year following the accident. If the State had moved promptly to hold the hearing, the imposed penalty of suspension of one year would have coincided with the petitioner's voluntary suspension of driving. As it happened, because of the State's delay, the petitioner's voluntary suspension of driving was not taken into consideration by the Administrative Law Judge. The petitioner was doubly penalized in that while proceedings involving license revocations are not criminal trials, the New Jersey Supreme Court has recognized that the loss of driving privileges affects people in a serious, substantial manner, and that such proceedings must meet those incidents of fairness underlying due process, *In re Arndt*, 67 N.J. 432, 436 (1975); *David v. Strelecki*, 51 N.J. 563, 566 (1962).

An amendment to *N.J.S.A.* 39:5-30, although it became effective subsequent to the date of the accident *sub judice* but prior to the hearing, imposes strict time limits within which the suspension proceedings must be heard. (Appendix B) The Administrative Law Judge made findings of fact that the delays herein exceeded those time limits, as well as being similar to those in the *Arndt* matter. In *Arndt* the New Jersey Supreme Court considered the problem of administrative delays although specifically concerned with the prosecution of those drivers who refuse to submit to a breath chemical test after having been arrested on suspicion of driving while under the influence of intoxicating liquors. The New Jersey Supreme Court held in that case that a delay of two years and eight months between the arrest and the order of suspension justified reversing the order of suspension because the Division failed to institute the suspension proceedings within a reasonable time and the proceedings as a whole were conducted with "seriously unfair disregard of appellant's rights."

These considerations are equally applicable to other driving offenses, however. The New Jersey Supreme Court in *Arndt* noted:

> We address the matter of the administrative delays in prosecution of these proceedings. N.J.S.A. 39:4:50.4 provides that the arresting officer shall deliver to the Director his sworn report of the driver's refusal to submit to the test and that "[*u*]*pon receipt of such a report,*" if the Director finds the report to be in order, "he shall . . . suspend the person's license . . . unless such person, within 20 days of the date of such notice . . ." requests a hearing (emphasis added).

The Court then went on to point out the purpose underlying this directive from the legislature:

> It is clear from this language that the Legislature contemplated that the Director should move promptly to process the violation after notification by the police. This direction is apparently designed primarily to serve the statutory policy of protecting the traveling public by removing the offending driver from the highways with reasonable dispatch. See *Atkinson v. Parsekian*, 37 N.J. 143, 155 (1962); *David v. Strelecki*, 51 N.J. 563, 566 (1968).

N.J.S.A. 39:5-30 directs that prompt administrative procedures be instituted whenever a matter is presented to the director involving an alleged violation of *R.S.* 39:4-129 wherein the death of another has occurred as in the present case. This statute provides that a preliminary hearing shall be held on the matter within 15 days of the date that the summons was issued or the arrest made and further that a preliminary suspension shall issue if grounds exist immediately after the hearing. Whether or not a finding of probable cause was made, a hearing shall be held within forty-five days of the date the summons was issued or arrest was made.

In the present case the Administrative Law Judge denied the petitioner's motion to dismiss on the ground that the administrative delay in the case was excessive and fundamentally unfair. The Judge noted that since the enactment of the amendment to *N.J.S.A.* 39:5-30, which was effective on February 27, 1980, fatal accident cases have been subject to strict statutory time frames (Appendix C, page A5). Counsel for the Director argued that there was a shortage of attorneys and a backlog of old cases. Although the Judge found that the total time period involved was within a few weeks of the delay disapproved in *Arndt*, six weeks were attributable to the petitioner's own adjournment request and the Judge found "no dereliction of administrative duty similar to

that highlighted in the *Arndt* case (Appendix C, page A7).

It is clear that the objectives intended by the Legislature by the enactment of *N.J.S.A.* 39:5-30 were not met by the proceedings in this case. There was an unconscionable delay which greatly prejudiced the petitioner. Not only did the delayed suspension of his license occur after he had already voluntarily refrained from driving for one year but the delayed suspension came after he had obtained employment and needed the use of his car.

If the purpose of the prompt handling of certain traffic violations is to protect the driving public then how can the Director possibly justify suspending a license some thirty months after the particular offense? There is no rational relation between the manner in which the petitioner is driving at the present time and the suspension of his license. Where there is no rational relation between an agency's action and the avowed purpose for that action, the agency's action becomes arbitrary and capricious. *Roth v. Board of Trustees*, 49 N.J. Super. 309 (App. Div. 1958).

CONCLUSION

For the reasons stated above, the decision of the New Jersey Supreme Court which denied petitioner's application to review the decision of the Director of Motor Vehicles, raises a question of general importance which should be reviewed by this Court. We believe it is in the public interest that this decision be reviewed so that a prompt authoritative determination may be made on this question.

Respectfully submitted,

Robert B. Cherry,
Attorney for Petitioner

By: /s/ Edward R. Schutzer
EDWARD R. SCHUTZER

APPENDIX A

SUPREME COURT OF NEW JERSEY
C-293 SEPTEMBER TERM
19,151

WILLIAM J. HASER,
Petitioner,

vs.

JOAN H. WISKOWSKI, Director of the Division of Motor Vehicles, State of New Jersey,
Respondent.

ON PETITION FOR CERTIFICATION
(Filed January 28, 1982)

To the Appeli... Division, Superior Court:

A petition for certification of the judgment in A-4794-80T3 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 25th day January, 1982.

/s/ STEPHEN TOWNSEND
Clerk

APPENDIX B

N.J.S.A. 39:5-30—Suspension or Revocation of Driver's License, Registration Certificate or Nonresident reciprocity privileges

***b. Whenever a matter is presented to the director involving an alleged violation of

* * *

(4) R.S. 39:4-129 wherein the death of another occurred, the director shall issue a proposed notice of suspension or revocation of any license certificate or any nonresident reciprocity privileges held by the individual charged or issue a temporary order prohibiting the individual from obtaining any license to operate a motor vehicle in this State. A preliminary hearing shall be held on the matter within 15 days of the date that the summons was issued or the arrest made. Adjournment of such hearing upon motion by the individual shall be given only for good cause shown. The administrative law judge hearing such matter shall determine at such hearing whether there is probable cause to believe that grounds exist for suspension or revocation of the individual's license certificate. If, from the evidence, the administrative judge determines that such grounds exist, he shall immediately issue a preliminary suspension of any license certificate or any nonresident reciprocity privileges held by the individual charged or issue a temporary order prohibiting the individual from obtaining any license to operate any motor vehicle in this State. After concluding the proceeding the administrative law judge shall transmit his findings to the director. Whether or not a preliminary finding of probable cause was made at a preliminary hearing, a hearing shall be held within 45 days of the date that the summons was issued or arrest was made. * * *

APPENDIX C

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. MVH 1729-80

AGENCY DKT. NO. H0732 78571
09614

IN THE MATTER OF:
WILLIAM HASER

Record Closed: April 24, 1981. Decided: 5/11/81

Received by Agency: 5/13/81.

Mailed to Parties: 5/14/81

APPEARANCES:

Robert Cherry, Esq., for Respondent

Fred Title, Esq., for the Director of the Division of Motor Vehicles (Barry H. Evenchick, Esq., attorney)

BEFORE NOAMI DOWER-LABASTILLE, ALJ:

The Director of the Division of Motor Vehicles (Director) sent William J. Haser (respondent) notice of a proposed suspension of his driving privileges pursuant to N.J.S.A. 39:5-30, charging respondent with violations of N.J.S.A. 39:4-98 (failing to drive at appropriate speed at a curve), 4-82 (failure to drive on right half of roadway) and 4-97 (careless driving resulting in the death of Linda Lockwood. Respondent requested a hearing. The Director transmitted the matter to the Office of Administra-

tive Law for determination as a contested cause pursuant to N.J.S.A. 52:14F-1 et seq. A list of exhibits introduced at the hearing on April 24, 1981 is attached to this decision.

Motion to Dismiss

Respondent moved to dismiss on grounds that administrative delay in the case was excessive, and was fundamentally unfair. Counsel for the Director argued that the delay was caused by a shortage of deputy attorneys general to try fatal accident cases. (Since the amendment of N.J.S.A. 39:5-30, effective February 27, 1980, fatal accident cases have been subject to strict statutory time frames.) The Director is now hiring attorneys on a per diem basis to remove the backlog of old cases. Present counsel is such a per diem attorney. The leading case on this issue is *In re Arndt*, 67 N.J. 432 (1975). In *Arndt*, an implied consent case, there were two periods of administrative inaction (twenty months and ten months) in a total time of two years and eight months. I FIND the procedural facts in the present case to be:

1. Chronology
   November 14, 1978: Fatal Accident
   April 27, 1979: Notice of Proposed Suspension
   May 1, 1979: Hearing Request
   August 1, 1979: Informal Conference
   April 27, 1980: Transmitted to Office of Administrative Law
   March 6, 1981: First Hearing Date
   April 24, 1981: Adjourned Hearing Date
   May 11, 1981: Date of Initial Decision
   June 25, 1981: Approximate Date of Director's Decision

2. The longest delays were almost eleven months and nine months during which period the amended statute became effective.

3. The total time period is within a few weeks of the delay disapproved in *Arndt* but six weeks were attributable to respondent's adjournment request.

4. The major delay was attributable to the backlog of old cases resulting from the need to meet a statutory hearing deadline for new fatal accident cases on and after February 27, 1980.

I CONCLUDE that no dereliction of administrative duty similar to that highlighted in the *Arndt* case occurred in this matter. Further, the *Arndt* holding is partially supported by the statutory language of N.J.S.A. 39:4-50.4, interpreted as a directive to move promptly. *Arndt*, supra., 435. *Arndt* concerned refusal to take a breath test. The proofs were all available on the date of the incident. In the present case, investigation was necessary. As will be discussed below, the State's first witness was in a coma for three weeks and regained her memory slowly thereafter and was still doing so after the municipal court hearing on September 25, 1980. I CONCLUDE no dismissal is warranted under the circumstances.

* * *

I FIND:

1. On November 14, 1978, respondent was driving at a high rate of speed (a minimum of 40 mph in a 30 mph zone) on Scioto Drive when he lost control on a curve, skidded into the left lane of traffic for at least 100 feet, and struck a telephone pole, killing Linda Lockwood and critically injuring Susan Argenio and himself.

2. Despite the fact that he knew a week before the accident that there was a mechanical malfunction in the gear engagement, he continued to drive the vehicle. The malfunction did occur but was merely a subsidiary contributing factor to the accident.

3. Respondent is unmarried and works as a mechanic nights and as a plumber's assistant during the day, but the plumber whom he assists provides transportation from job to job a good part of the time.

4. After a municipal court conviction of reckless driving respondent completed a driver training program successfully but his abstract records one non-point conviction and a possibly nonculpable accident in 1980.

* * *

I CONCLUDE that respondent's license should be suspended pursuant to N.J.S.A. 39:5-30a. The proposed 18-month penalty was mitigated somewhat by completion of a good driver program and the testimony that the young man is now holding down two jobs after his recovery from a serious injury. A one-year suspension sanction sems in accord with the standards set forth in *Cressi v. Parsekian*, 81 N.J. Super 536 (App. Div. 1963) aff'd 43 N.J. 326 (1964).

* * *

It is, therefore, ORDERED that the driving privileges of William J. Haser be suspended for one year and that he pay a $20 restoration fee.

* * *

May 11, 1981 s/NAOMI DOWER-LABASTILLE,
ALJ

NO. 81-2170

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JUL 2 1982
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

WILLIAM J. HASER,

Petitioner,

v.

JOAN H. WISZOWSKI, Director of Division of Motor Vehicles, State of New Jersey,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

---

BRIEF AND APPENDIX IN OPPOSITION

IRWIN I. KIMMELMAN,
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ROBERT M. JAWORSKI,
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On the Brief.

Counter-Statement of Questions Presented

1. Whether the one-year suspension of driving privileges imposed upon the petitioner by the New Jersey Director of Motor Vehicles because of petitioner's involvement in and responsibility for a motor vehicle accident in which a person was killed was reasonable under the circumstances and not arbitrary or capricious?

2. Whether the delay in bringing this matter to a hearing served to deny petitioner the due process of law to which he is constitutionally entitled?

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B. The New Jersey Superior Court, Appellate Division was correct in concluding that the one-year suspension imposed by the Division of Motor Vehicles was reasonable under the facts and circumstances of this case and hence neither arbitrary nor capricous and that the delay in bringing this matter to hearing did not deny petitioner the due process of law to which he is constitutionally entitled	9
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NO. 81-2170

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

WILLIAM J. HASER,

Petitioner,

v.

JOAN H. WISKOWSKI, Director of Division of Motor Vehicles, State of New Jersey,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF IN OPPOSITION

Counter-Statement of the Case

This matter is before the Court on the petition of William J. Haser for a writ of certiorari to the Superior Court of New Jersey, Appellate Division to review the judgment entered by that Court on October 19, 1981 (App. A herein). That judgment affirmed an administrative order of the Director of the New Jersey Division of Motor Vehi-

cles suspending petitioner's driving privileges for a period of one year because of his involvement in and responsibility for an automobile accident in which a person was killed.

The subject automobile accident occurred on November 14, 1978 and resulted from petitioner's operation of a motor vehicle in violation of N.J.S.A. 39:4-98 (failure to drive at an appropriately reduced speed when approaching or negotiating a curve), N.J.S.A. 39:4-82 (failure to drive on the right half of the roadway) and N.J.S.A. 39:4-97 (careless driving). The deceased was a passenger in petitioner's vehicle. The suspension proceedings were initiated by the New Jersey Division of Motor Vehicles pursuant to N.J.S.A. 39:5-30 (App. B herein*) by Notice of Proposed Suspension dated April 27, 1979, following investigation of the subject accident by both State and local police authorities and review of their findings by the Fatal Accident Review Board of the Division of Motor Vehicles (Ra2**). Petitioner requested a hearing in regard to the proposed suspension of his driving privileges and a pre-hearing conference was conducted on August 1, 1979, following which, on March 26, 1980, the matter was transferred to the Office of Administrative Law for purposes of conducting a formal, evidentiary hearing (Aa1 to Aa3, Ra3). By notice dated February 19, 1981, the formal hearing was scheduled for March 6, 1981 (Ra4), but adjourned at petitioner's request until April 24, 1981 (Aa4 to Aa8), when it was heard before Administrative Law Judge Naomi Dower-LaBastille.

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* The statute provided in petitioner's Appendix A is not the provision pursuant to which the instant action was taken, since it expressly governs only accidents ocurring after February 27, 1980.

** "Ra" and "Aa" refer, respectively, to the Appendices attached to the respondent's and the appellant's brief filed in the Superior Court of New Jersey, Appellate Division.

At the hearing, the proofs showed conclusively, and Judge LaBastille so concluded, that petitioner had driven his automobile at such a high rate of speed and with so little care and attention as to totally lose control of it while approaching a curve in a residential area (Aa11 to Aa15*). The car skidded 156 feet, crossing over into the oncoming lane of traffic and then off the roadway completely, thereupon become airborne and finally colliding with a pole with sufficient force to sever the car completely in half and to severely injure three of its four occupants, one fatally.** Following this accident and while awaiting the administrative hearing, moreover, petitioner, who had only been licensed for two months prior to the accident, was involved in yet another accident and was convicted of yet another traffic violation (obstructing traffic in violation of N.J.S.A. 39:4-67) (Aa14).

In his defense, petitioner, although never actually conceding that the subject accident was his fault, objected essentially only to the timing of the hearing—his position being that the hearing was so distant in time from the happening of the accident as to represent a denial of procedural due process, relying upon *In re Arndt*, 67 N.J. 432 (1975) (App. C, p. A4 of the Petition). Additionally, petitioner sought to convince the Administrative Law Judge to recommend a reduction of the eighteen-month period of suspension proposed by the Director based upon his assertions that he had voluntarily chosen not to drive for a

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* This portion of the Initial Decision of the Administrative Law Judge was omitted from petitioner's Appendix C. Hence, it was necessary to cite to the Appendix attached to petitioner's brief filed with the Superior Court, Appellate Division.

** Indeed, prior to the hearing, petitioner was convicted in Municipal Court of reckless driving in connection with this accident (Ra16 to Ra17).

period of one year immediately following the accident, that he was presently employed in two jobs in which an ability to drive was important and that he had, since the accident, successfully completed a driver improvement program (in fulfillment of the Municipal Court sentencing order following his conviction for reckless driving) (Aa13).

In rejecting petitioner's due process argument, the Administrative Law Judge noted that the delay in bringing this matter to hearing resulted from no dereliction of administrative duty similar to that highlighted in the *Arndt* case,* that the suspension action in *Arndt* was undertaken pursuant to a completely different statute than was involved here and, lastly, that petiitoner was in no way prejudiced by the delay (App. C, p. A5 of the Petitioner). Finding the evidence sufficient to support the charges and citing appellant's two jobs and his completion of a good driving course as mitigating circumstances, the Judge recommended that petitioner's driving privileges be suspended, but for only one year (App. C, p. A6 of the Petition). The Director, in his Memorandum Decision dated June 22, 1981 (Ra1), agreed and issued the appropriate Order of Suspension (Aa20).

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* With the passage of N.J.S.A. 39:5-30(b) (L. 1979, c. 463, Section 2), effective February 27, 1980 (App. A of the Petition) the New Jersey Legislature declared that a certain class of suspension actions based upon involvement in a fatal accident must thereafter be promptly instituted and adjudicated. The instant action, however, having occurred prior to the effective date of this amendment, was not only not governed by its provision, but, because of the immediacy attached to those fatal accident cases which were so governed, had to be given less of a priority as a result thereof. Thus, *all* hearings on fatal accidents occurring prior to the effective date of this amendment, including this one, had to be delayed pending expansion of the State's capacity to deal with them, in order that those mandated by this amendment to be immediately heard were, in fact, so heard.

Petitioner appealed the Director's decision to the Superior Court of New Jersey, Appellate Division, which, in a one paragraph per curiam opinion (App. A herein), affirmed "substantially for the reasons set forth in the Initial Decision of the Administrative Law Judge dated May 11, 1981." On or about November 17, 1981, petitioner filed with the Supreme Court of New Jersey a Petition for Certification to the Superior Court, Appellate Division to review its Decision. By order entered January 25, 1982, the Supreme Court of New Jersey denied the Petition (App. A of Petition).

On April 15, 1982, petitioner filed the within Petition for a Writ of Certiorari, notification of the Docketing of which was received by respondent on June 14, 1982.

ARGUMENT

The petition for a writ of certiorari should be denied because the decision of the New Jersey Superior Court, Appellate Division, does not present an important question of federal law which should be settled by this Court and because the Superior Court, Appellate Division correctly determined that the suspension imposed by the Director of Motor Vehicles was neither arbitrary nor capricious and that the delay in bringing the matter to hearing did not deny due process.

The rules of this Court governing review on writ of certiorari make plain that review will be granted only "when there are special and important reasons therefor." Sup.Ct. R. 17.1. In this case, the Superior Court of New Jersey, Appellate Division affirmed the decision of the Director of the New Jersey Division of Motor Vehicles to suspend the driving privilege of the petitioner for a period of one year

because of his involvement in and responsibility for a fatal automobile accident. In so doing, the Court determined that the one-year suspension was neither arbitrary nor capricious under the circumstances and that the delay in bringing the matter to hearing did not deny the petitioner the due process of law to which he is constitutionally entitled. Finding no special reasons requiring certification of this judgment, the Supreme Court of New Jersey declined to review same.

Notwithstanding the petitioner's arguments to the contrary, the decision of the New Jersey Superior Court, Appellate Division was clearly correct and there are no special and important reasons to justify further review by this Court.

A. This case presents no constitutional issue of substantial importance or any other special or important reasons requiring plenary review by this Court.

Endeavoring to characterize this case as one of major significance, petitioner refers to several cases which establish the principle that a State may not take away a driver's license without affording the motorist procedural due process. Although acknowledging that unlike the individuals in those cases he *was* afforded a full, evidentiary, pre-termination hearing within which to challenge the factual basis for the Division's action, petitioner asserts that the mere delay in bringing the matter to hearing denied him such procedural due process. At no time, however, does he refer to any case, state or federal, which establishes such a principle, and particularly under circumstances such as here, where petitioner was in no way prejudiced by the

delay in the presentation of his case.* In fact, the only case to which he refers on this precise point is a New Jersey case, *In re Arndt*, 67 N.J. 430 (1975), which is not only readily distinguishable from the instant situation but which was acknowledged by the deciding Court to rest upon principles of due process *in excess of* federal constitutional demands. *Id.* at 436.

On the other hand, both state and federal case law are replete with pronouncements that the mere occurrence of delay will not generally affect the validity of an administrative determination particularly where neither prejudice to the affected individual nor a dilatory attitude on behalf of the agency has been shown. See *In re Garber*, 141 N.J. Super. 87, 90-92 (App.Div. 1976); *In re Darcy*, 109 N.J. Super. 452, 462 (App.Div. 1971); *In re Emberton*, 109 N.J. Super. 211, 215-216 (App.Div. 1970). *See also, Wright* v. *Califano*, 587 F.2d 345 (7 Cir. 1978), failure of Social Security Administration to act upon application for increase in old age benefits from September 1, 1972 to May 13, 1975 will not justify a court in requiring that such application be granted; *E.E.O.C.* v. *Exchange Security Bank*, 529 F.2d 1214 (5 Cir. 1976), 21-month delay in issuing subpoena duces tecum followed by 18-month delay in seeking enforcement did not warrant denial of enforcement; *Chromcraft Corp.* v. *E.E.O.C.*, 465 F.2d 745 (5 Cir. 1972), more than one-year delay in serving employer with formal charges of race discrimination will not justify nullification

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* Petitioner attempts to fashion "prejudice" by highlighting the fact that had the suspension been imposed sooner, it might have coincided, or, at least, overlapped with his alleged one-year abstention from driving and/or with the period during which he was not working so that its effects would not have been felt so severely. This, however, is not the type of "prejudice" with which due process is concerned, but merely a factor to be taken into account in determining the appropriate penalty.

of such action; *United States* v. *Smith*, 443 F.2d 1278, 1280 (9 Cir. 1971), rehearing den. 451 F.2d 1027 and *United States* v. *Sundstrom*, 359 F.Supp. 1252 (S.D.N.Y. 1973), holding generally that "[i]t is not the function of this court to . . . establish arbitrary time deadlines [for administrative action] . . . . [I]n the absence of intentional delay, discriminating treatment or favoritism, the administrative action will be upheld;" and *Deloney* v. *Califano*, 488 F. Supp. 610 (N.D.Ill. 1980), long delays in processing of Social Security disability benefit claims do not violate due process; *cf.*, *Kelly* v. *Railroad Retirement Board*, 625 F.2d 486, 490-91 (3 Cir. 1980), holding unreasonable a four-year deprivation of pension benefits while awaiting an administrative determination regarding eligibility.* *And* see, *E.E.O.C.* v. *Raymond Metal Prod. Co.*, 385 F.Supp. 907, 914 (D.Md. 1974), holding that Section 706 of the federal Administrative Procedure Act, 5 U.S.C. §706, which empowers the federal courts to "compel agency action unlawfully withheld or unreasonably delayed", was "clearly intended for situations where an agency has failed to take appropriate action and not for situations . . . where the agency action has been taken in an allegedly unreasonable time."

Accordingly, the decision sought herein to be reviewed does not present a substantial federal question nor any special or important reason to justify review by this Court on writ of certiorari.

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* This case, and others like it, it is noted, are readily distinguishable from the instant one in that petitioner herein was not deprived of anything while awaiting his hearing. Rather, his driver's license remained in full force and effect during the entire duration of the administrative proceedings, a fact which indeed helps to explain why petitioner did not demand a more prompt hearing and was instead content to wait for the hearing to be scheduled.

B. The New Jersey Superior Court, Appellate Division was correct in concluding that the one-year suspension imposed by the Director of Motor Vehicles was reasonable under the facts and circumstances of this case and hence neither arbitrary nor capricious and that the delay in bringing this matter to hearing did not deny petitioner the due process of law to which he is constitutionally entitled.

Pursuant to N.J.S.A. 39:5-30 the New Jersey Director of the Division of Motor Vehicles has the power to suspend or revoke a driver's license for violation of any of the provisions of the Motor Vehicle Code. A licensee is entitled to written notice of the proposed suspension and the grounds therefor, as well as a hearing, if requested. Although the proceeding arises out of the commission of an offense punishable by the courts, it is administrative and not criminal. *Atkinson* v. *Parsekian,* 37 N.J. 143, 147, 155 (1962). Essentially, the statutory purpose is to foster safety on the highway, *Atkinson* v. *Parsekian, supra* at 155, although as was observed in *Cresse* v. *Parsekian,* 43 N.J. 326, 328-9 (1964), motor vehicle license revocations and suspensions "undoubtedly have punitive incidents, as well as deterrent effects which also serve to protect the public."

The Director has chosen to exercise such authority in all cases where a full and adequate investigation has shown that the violation(s) proximately caused a motor vehicle accident in which a person was killed. This investigation is performed by a special (Fatal Accident Investigation) unit of the New Jersey State Police, whose report is reviewed by a Fatal Accident Review Board comprised of both civilian and enforcement personnel, and forwarded to the Director with the Board's findings and recommendation.

In the instant matter, it is clear, and virtually conceded, that petitioner did violate several provisions of the New Jersey Motor Vehicle Code, specifically N.J.S.A. 39:4-98

(failure to drive at an appropriately reduced speed when approaching or negotiating a curve), N.J.S.A. 39:4-82 (failure to drive on the right half of the roadway) and N.J.S.A. 39:4-97 (careless driving),* and that such violations proximately caused the subject motor vehicle accident which left one young woman dead and two other persons seriously injured. That being the case, suspension of petitioner's driver's license was, as concluded by the Court below, entirely appropriate.

In exercising his discretion to determine the length of any such suspension, the Director is obligated to weigh each case individually and to consider the totality of circumstances involved, including the facts which constitute the particular violation(s); whether the motorist was willful or reckless, or merely negligent, and, if merely negligent, how negligent; how long the motorist had been driving; whether this is a first offense; whether he has been involved in any other accidents; his age and physical condition; whether there were any aggravating circumstances, such as drinking, or, whether there were extenuating circumstances. *Cresse* v. *Parsekian, supra* at 81 N.J. Super. 549. The Director's judgment in this regard is entitled to great weight "in view of the serious public concern with the critical area of the general welfare committed to his administrative purview," *Vance* v. *State,* 67 N.J. Super. 63, 67 (App.Div. 1961), and should be affirmed so long as reasonable and not arbitrary or capricious, *Cresse, supra* at 81 N.J. 548.

Applying this standard to the facts of this case, the New Jersey Superior Court, Appellate Division, correctly con-

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* Having been convicted in Municipal Court of reckless driving, petitioner's carelessness, at the very least, was conclusively established.

cluded that the Director did not abuse his discretion in setting a one-year period of suspension. Such a period of suspension is thus clearly not excessive but appears lenient in view of the extremely serious nature of petitioner's offense, which, but for fortuitous circumstances, could easily have resulted in several deaths rather than only one, coupled with the aggravating circumstances of petitioner's demonstrated recklessness, his subsequent involvement in yet another accident and his subsequent conviction of obstructing traffic in violation of N.J.S.A. 39:4-67. *See Fosgate* v. *Strelecki*, 102 N.J. Super. 435 (App.Div. 1968), aff'd. 53 N.J. 155 (1968), wherein the Court acknowleged that a one-year suspension was appropriate where a fatality was involved, even absent any such aggravating circumstances.

The one-year period of suspension, moreover, clearly reflects consideration of petitioner's uncorroborated assertion that for approximately one year following the subject accident, he voluntarily abstained from driving. Thus, it is merely noted that the Director did, in fact, *reduce* the period of suspension from that originally proposed, *i.e.*, from 18 months to one year; that even a two-year period of suspension under the grievous circumstances of this case would not have been unreasonable; and, finally, that there was ample reason in the record for the Director to have discounted petitioner's uncorroborated assertion of a one-year abstention from driving. In this latter regard, the record reflects that at no time during this alleged period of abstention did petitioner physically surrender his license; that he, in fact, *renewed* it during this period and paid the appropriate fee therefor; that during at least a portion of this period petitioner was either at the hospital or at home convalescing from his admittedly-serious injuries; that he had no demonstrated need to drive during the subject period since he was then neither working nor a student;

and that for all that is apparent in the record he may not have even owned a car or had one available for use during this period.

Regarding the delay in bringing this matter to hearing, both the Court below and the Administrative Law Judge recognized that here, unlike in *In re Arndt, supra,* the only case relied upon by petitioner in support of his position, petitioner was caused to suffer *no* actual prejudice as a result of the said delay. See *In re Garber, supra* at 90-92 and *In re Emberton, supra* at 215-16. ("Delay will not generally affect the validity of an administrative determination, particularly where no prejudice has been shown.") Thus, unlike in *Arndt,* petitioner herein was promptly notified following the Division's investigation of the subject accident of its intention to pursue suspension action against him, thereby enabling him to take any and all necessary steps to ensure an adequate presentation of his case when it was finally reached. Indeed, he took such steps and *was* able to adequately present his case, as the record well illustrates. Witnesses' recollections, moreover, again, unlike in *Arndt,* were not a problem; with one witness, in fact, because of the continued improvement in her condition following the accident, able to remember *more* on the date of the hearing than at any time previously (Aa11).

Additionally, it is but noted that at no time following the holding of the pre-hearing conference in August, 1979 did petitioner complain of the delay in the scheduling of the full hearing or bring to anyone's attention any need on his part to have the hearing conducted sooner. Thus content to sit and wait, he cannot now be heard to complain. Lastly, it is significant that the delay in this matter was clearly not an aberrant delay caused by some dereliction of administrative duty as was existent in *Arndt,* but rather a delay occasioned by a shortage of available resources to

respond adequately to a change in legislation which placed more and immediate demands upon those resources. *See* footnote at p. 4. As recognized by the Court in *Wright* v. *Califano, supra,* what would be a reasonable time within which to conduct the administrative hearing under such circumstances (even where the applicable statute demands reasonably prompt action, as it does in *Wright* [and did in *Arndt*] but does *not* here) "must be judged in a broader context" than simply counting the number of days. In defining what that broader context should be and with particular relevance to the facts of the instant case, the Court in *Wright* thus stated that:

> Since the delays complained of are systemwide and there are no allegations of bad faith, a dilatory attitude, or a lack of evenhandedness on the part of the agency, the reasonableness of the delays in terms of the legislatively imposed "reasonable dispatch" duty must be judged in the light of the resources that Congress has supplied to the agency for the exericse of its functions, as well as the impact of the delays on the applicants' interests. Since administrative efficiency is not a subject particularly suited to judicial evaluation, the courts should be reluctant to intervene in the administrative adjudication process, absent clear congressional guidelines or a threat to a constitutional interest. [*Id.* at 353-54.]

For these reasons, it is readily apparent that the decision of the Superior Court, Appellate Division was entirely proper and in accord with existing law. Furthermore, it is also apparent that this case presents no substantial federal question nor any special and important reason to justify further review on writ of certiorari. Clearly, the petition for writ of certiorari should be denied.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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On the Brief.

APPENDIX A

***Per Curiam* Opinion of the Superior Court of New Jersey, Appellate Division, dated October 19, 1981**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-4794-80T3

WILLIAM J. HASER,

Appellant,

vs.

JOAN H. WISKOWSKI, Director of the Division of Motor Vehicles, State of New Jersey,

Respondent.

Argued October 5, 1981—Decided October 19, 1981.

Before Judges Allcorn and Francis.

On appeal from a Final Decision and Order of the Director of the Division of Motor Vehicles.

Robert B. Cherry argued the cause for appellant (Richard W. Vallario, on the brief).

Robert M. Jaworski, Deputy Attorney General, argued the cause for respondent (James R. Zazzali, Attorney General of New Jersey, attorney, and Erminie L. Conley, Assistant Attorney General, of counsel, Mr. Jaworski, on the brief).

Appendix A

PER CURIAM

The order of the Director of the Division of Motor Vehicles, suspending the driving privileges of the appellant, William J. Haser, for a period of one year, is affirmed substantially for the reasons set forth in the Initial Decision of the Administrative Law Judge dated May 11, 1981.

Affirmed.

APPENDIX B

Text of N.J.S.A. 39:5-30 as it Existed on the Date of the Subject Accident

39:5-30 Suspension or revocation of registration certificates and drivers' licenses or reciprocity privilege; written notice; summoning witnesses; failure to obey summons; penalties; witness fees; hearings under delegated authority.

Every registration certificate and every license certificate to drive motor vehicles may be suspended or revoked, and any person may be prohibited from obtaining a driver's license or a registration certificate, and the reciprocity privilege of any nonresident may be suspended or revoked by the commissioner for a violation of any of the provisions of this Title or on any other reasonable grounds, after due notice in writing of such proposed suspension, revocation or prohibition and the ground thereof.

He may also summon witnesses to appear before him at his office or at any other place he designates, to give testimony in a hearing which he holds looking toward a revocation of a license or registration certificate issued by or under his authority. The summons shall be served at least five days before the return date, either by registered mail or personal service. A person who fails to obey the summons shall be subject to a penalty not exceeding one hundred dollars ($100.00), to be recovered with costs in an action at law, prosecuted by the Attorney-General, and in addition the vehicle registration or driver's license, or both, as the case may be, shall forthwith be revoked. The fee for witnesses required to attend before the commissioner shall be one dollar ($1.00) for each day's

attendance and three cents ($0.03) for every mile of travel by the nearest generally traveled route in going to and from the place where the attendance of the witness is required. These fees shall be paid when the witness is excused from further attendance, and the disbursements made from payment of the fees shall be audited and paid in the manner provided for expenses of the department. The actual conduct of said hearing may be delegated by the commissioner to such departmental employees as he may designate, in which case the said employees shall recommend to the commissioner in writing, whether the said licenses or certificates shall or shall not be suspended or revoked.

Amended by L.1939, c. 216, p. 614, § 2, eff. July 12, 1939; L.1945, c. 256, p. 782, § 1.